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Broadband Regulation, American-Style
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Introduction

- My goal this afternoon is to provide an overview of how the United States approaches the challenge of broadband regulation in times of economic turmoil.
- First of all, we should recognize that regulatory policy is only one of many factors shaping investment decisions.
 - Investors also look at key conditions, including levels of personal computer deployment, mobile penetration rates and prospects for inter-modal competition.
 - In this regard, I believe that the U.S. and European environments are similar, but not identical.
- One important aspect of regulatory policy that we share is reliance on an independent regulator.
- In the United States, we believe independent regulators have a critical role in what FCC Chairman Powell calls “digital migration” to a broadband world.

Twin Crises

- Across the globe, we confront two separate, related crises that have undermined public confidence and investor faith.
 - One involves accounting scandals and corporate malfeasance on the part of specific and isolated companies.
 - The other -- the so-called “telecom meltdown” -- has resulted in broad sectoral distress, marked by over capacity, high debt burdens, lost jobs and precipitous declines in the market value of technology companies.
- Despite these challenges, in the United States, as in Europe, there are reasons to be confident in the sector’s long term prospects.
 - **Mobile phone** penetration in the United States is rising – reaching 45% in 2001. 94% of Americans live in areas with 3 or more wireless operators. As commercial offerings increasingly mimic the flat-rate local calling plans familiar to U.S. consumers, cellular phones are even beginning to replace the traditional wireline family phone.
 - **Internet usage** continues to grow. 60% of U.S. households have Internet access. 98% of U.S. schools are connected to the Internet.

- **Broadband** is increasingly available to residential American users. Cable modem and DSL services are expected to be available to 90% of U.S. households by year's end; 13% of U.S. households subscribe to them.

Role of the Regulator

- Let's look at where the telecom sector is now.
- Rampant pessimism overstates the problem to the point of endangering recovery. To encourage a return to conditions needed for growth, Chairman Powell has identified critical steps to the economic recovery of the sector.
 - Implementation of these steps would require action by a wide range of policy makers.
- This afternoon, I'd like to focus on only one part of that action plan – those steps that are the responsibility of the independent regulator.
- What is the role of the independent regulator?
 - First and foremost, to be, and be perceived to be, truly “independent.” This means protecting the “public interest,” not just commercial interests; **and**, being attuned to broad commercial interests, not just those of a single company.
- Other roles of the regulator are:
 - to safeguard continuity in essential telecommunications services;
 - to explain the key dynamics affecting the telecom industry to decision-makers in the commercial, political and social sectors;
 - to encourage investor confidence by providing transparent, predictable rulemaking processes, and quick and effective enforcement of those rules;
 - to assess and re-assess regulatory policies in light of regulatory experience, as well as in light of commercial, social, judicial and technological developments; **and**
 - to be flexible enough to refine regulatory approaches as necessary.
- It is not the regulators job to “pick winners and losers,” or to intervene in the market to subsidize (directly or indirectly) failing companies.
 - **Instead**, the regulator must understand the technological innovations and market realities shaping the decision-making of service providers and investors, and must ensure that regulatory rules do not exacerbate existing problems or distort investment incentives.

Local Competition: the U.S. Experience

- At the FCC, our ongoing work on local competition illustrates the continuous cycle of review and refinement.
- In the United States, the U.S. Congress sought in the 1996 Telecommunications Act to encourage local competition to mirror the robust competition in international and domestic long distance that blossomed out of the breakup of AT&T by Judge Green in 1984.

- There has been real progress. We see this when we evaluate conditions in specific states to determine whether local competition is robust enough to permit the local incumbent carrier (ILEC) to offer long distance service as well. In 23 states, including population centers such as New York, Pennsylvania and Texas, these requirements have been met and conditions in 12 other states – including California -- are currently under review.
- It is important to remember that, while the potential barriers to competition inherent in the control of bottleneck facilities were widely recognized and addressed in the 1996 Act, implementation of the Act's interconnection and unbundling requirements was a groundbreaking endeavor for the FCC.
 - As a result, the FCC's initial policies were somewhat theoretical.
- Today, the FCC is assessing its initial policies in light of the last six years of experience.
- In doing so, it now appears that, while most of the causes of the telecom meltdown have had little to do with regulatory policy, FCC's policies during the late 1990s did not help matters, and may even have contributed to the problems.
 - For example, some FCC policies may have over-stimulated competitive entry, as hundreds of competitive carriers (CLECs) began providing service. Once investors began insisting on profitability, the new competitors that did not have sound business plans found they could not survive.
- Through our reassessment, the FCC now has a better understanding of which facilities competitors truly need at regulated prices, and which they can self-provide or obtain at market-based rates. We know that facilities-based competition is most effective in spurring innovation. At the same time, we have seen the importance of timely provisioning for new entrants. Thus, we are more mindful of the need to balance the objectives of promoting competition, both within the telephone platform, and across different platforms.

Intermodal Competition and Broadband Policy

- Our reassessment comes amid evidence of the growing importance of **intermodal** competition – that is, competition among providers that use wireline telephony, cable, wireless, and satellite platforms.
- In evaluating the dynamics affecting broadband, the FCC's guiding principles in the broadband space are:
 - To promote the availability of broadband-capable infrastructure to all Americans, recognizing that infrastructure build-outs take time.
 - To conceptualize broadband to include any technological platform that is capable of fusing communications power with computing power to provide bandwidth-intensive content.
 - To ensure that, at this early stage, the broadband regulatory environment serves to promote investment and innovation.
 - Finally, we believe that sound regulatory policy should, where appropriate, harmonize regulatory rights and obligations that are

attached to the provision of similarly situated services across different technological platforms.

- This relates to what is often called the “regulatory parity” issue. The convergence of communication services **demands** that we rationalize our regulatory regime.
- The FCC’s role is on the “supply side.” The related demand-side challenge of increasing consumer adoption – implicating as it does a wide range of intellectual property, social policy and consumer behavior considerations -- goes far beyond the FCC’s mandate.
- To implement these principles, the FCC launched a major effort to refine local competition policies, clarify the regulatory environment for broadband services and lower the costs and risks of deploying of new infrastructure. Let me provide an overview.
 - The **Triennial Review Notice of Proposed Rulemaking (NPRM)** considers the incumbent LECs’ wholesale obligations to make their facilities available as unbundled network elements to competitors.
 - A related inquiry, the **National Performance Measures** asks whether to impose standard provisioning requirements on incumbent LECs.
 - **Cable Modem Declaratory Ruling and NPRM** of March 2002 clarified some aspects of cable modem broadband offerings and opened an inquiry into the scope of FCC jurisdiction to regulate information services.
 - The **Wireline Broadband NPRM** initiated an inquiry on the statutory classification of wireline broadband Internet access services. Mirroring the Cable Modem Declaratory Ruling, it tentatively concludes that wireline broadband and Internet access service are information services subject to FCC jurisdiction, but not to the full range of legacy common carrier regulation.
 - In the **Incumbent LEC Broadband Telecommunications Services NPRM (Dom/Non-Dom proceeding)** the FCC asks, among other things, how to define a “dominant player” in a converged world. Could we (and should we) deregulate specific carriers or specific services depending on relative levels of competition and market power in the provision of broadband services?
- In many respects, the issues we are addressing are the same ones that shaped the new European Union Communications Framework, though of course our efforts are based on the FCC’s long regulatory legacy as an independent regulator.
 - In that respect, over the next seven months, Europe will begin to gather the kinds of implementation experience that the FCC is now evaluating from six years of experience in the U.S. market.
 - We expect both experiences will enrich the other’s efforts.

Spectrum Policy

- For now, broadband access questions continue to focus on the wireline space. When moving to wireless access, focus inevitably turns to radio spectrum management, with its unique challenges.
- There is an increasing demand for access to spectrum.
- To meet the challenge, the FCC Chairman created the FCC Spectrum Policy Task Force last spring to conduct a comprehensive review of spectrum policies.
- In its November 7, 2002 staff-level report, the Task Force identified initiatives that could allow spectrum policy to keep pace with the relentless demands of the market.
- The Task Force Report calls for a migration toward more flexible, consumer-oriented policies, including by providing incentives for efficient spectrum use by both licensed and unlicensed users through flexible rules and facilitating secondary markets.
- It encourages adoption of quantitative standards (the so-called “interference temperature”) to provide interference protection, providing greater certainty for licensees and greater access to unused spectrum for unlicensed operators.
- The Task Force Report also notes that technological developments now permit spectrum managers to use time, in addition to frequency, power and location to permit more dynamic allocation and assignment of spectrum usage rights. This would provide access to unused or underused spectrum through time-sharing between multiple users and could lead to more efficient use of the spectrum resource.
- Finally, the Task Force Report recommends making greater use of both the “exclusive use” and “commons” models, limiting the use of the now-dominant “command-and-control” model to those instances of compelling public policy concern, such as with public safety applications, or where internationally harmonized spectrum is required.
- FCC staff has already begun to consult broadly on these ideas and look forward to exchanging views with spectrum stakeholders in the international community. Together, we can create an environment where technologies may be developed faster, deployed more rapidly and, therefore, provide the spectrum-based services desired by consumers.

Conclusion

- In the coming months, the Spectrum Task Force staff report, and other FCC staff efforts I have discussed today will come before the five FCC Commissioners for consideration and approval.
- In 2003, the FCC will therefore, continue to grapple with the full complexity of the issues identified by Chairman Powell as making up the “digital migration,” from homeland security and broadband to competition, spectrum and media policy.
- Our aim is to set the best possible regulatory framework for the future, with the “public interest” always foremost in our mind.